

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2012 - * 062 Amendment No. (req. for Amendments *)
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Proposed Rule Change by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

A proposed rule change to modify the corporate governance rules.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Erika Last Name * Moore
 Title * Associate General Counsel
 E-mail * erika.moore@nasdaqomx.com
 Telephone * (301) 978-8490 Fax (301) 978-8472

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 05/17/2012

By Edward S. Knight
(Name *)Executive Vice President and General Counsel
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“Nasdaq”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to modify the exception that allows a non-independent director to serve on a listed company’s audit committee, compensation committee or nominations committee under exceptional and limited circumstances.

The text of the proposed rule change is attached in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of Nasdaq approved the proposed rule change on October 19, 2011, which authorized the filing of the rule change with the Commission. No other action by Nasdaq is necessary for the filing of the rule change.

Nasdaq will implement the proposed rule upon approval.

Questions regarding this rule filing may be directed to Erika J. Moore, Associate General Counsel, Nasdaq, at (301) 978-8490 (telephone) or (301) 978-8472 (fax).

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

Nasdaq’s rules generally require that a listed company’s audit, compensation and nominations committees consist of “independent directors,” as defined in Listing Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

5605(a)(2).³ Under this definition, a company's board must determine affirmatively that a director does not have any relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In addition, there are certain categories of directors who cannot be considered independent, such as a director who is currently, or was during the prior three years, employed by the company, or a director who is a family member⁴ of an individual who is, or at any time during the past three years was, employed as an executive officer⁵ by the company.⁶ A director is not barred from being independent if he or she has a family member employed by the company, provided that the family member is not an executive officer of the company.

Nasdaq's rules also include an exception (the "Exception") to permit a listed company, under exceptional and limited circumstances and with proper disclosure, to allow one non-independent director to serve on the audit, compensation or nominations committee for up to two years.⁷ The Exception, which is used infrequently by Nasdaq-listed companies,⁸ was first adopted for audit committees in December 1999,⁹ when the

³ See Nasdaq Listing Rules 5605(c)(2), 5605(d)(2)(B) and 5605(e)(1)(B).

⁴ "Family Member" is defined as "a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home." Nasdaq Listing Rule 5605(a)(2).

⁵ "Executive Officer" is defined as an officer "covered in Rule 16a-1(f) under the [Exchange] Act." Nasdaq Listing Rule 5605(a)(1).

⁶ See Nasdaq Listing Rules 5605(a)(2)(A) and 5605(a)(2)(C).

⁷ See Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

⁸ On December 31, 2011, nine companies were using the Exception: six companies for the audit committee only, two companies for the nominations committee only and one company for both the nominations and compensation committees. In the two-year period from January 1, 2010 to December 31, 2011, 37 companies used the Exception for one or more of their committees.

audit committee requirements were significantly enhanced following the release of the report of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the “Blue Ribbon Report”).¹⁰ When Nasdaq implemented rules regarding independent director oversight of executive officer compensation and director nominations in 2003, these new rules included the Exception for compensation and nominations committees.¹¹

The Blue Ribbon Report identified examples of relationships that may interfere with an audit committee member’s exercise of independence but also specifically recommended adopting an exception for a director “who has one or more of these relationships” if the company’s board of directors, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its stockholders and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.¹² The Exception allows a listed company greater flexibility as to board and committee membership and composition. This is particularly important for a smaller company that may have relationships with large investors that may require such flexibility.¹³

⁹ See Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999).

¹⁰ See Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999).

¹¹ See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003).

¹² See the Blue Ribbon Report at 24.

¹³ Id. at 23. The Blue Ribbon Report proposed to exempt smaller companies (i.e., those with a market capitalization below \$200 million) from the proposed audit committee requirements. Id. at 12 and 23. Thus, while the Blue Ribbon

Currently, a listed company cannot utilize the Exception for a director who has a family member who is an employee of the listed company, even if that family member is not an executive officer of the company, if the director is not independent for an unrelated reason. However, that same family relationship would not otherwise preclude the director from being considered independent.¹⁴ To provide an example, consider a director who, until one year ago, was employed by a listed company and who has a son who is a non-executive employee of the listed company. That director cannot be considered independent until three years after the end of her employment.¹⁵ However, it is solely the prior employment relationship that precludes her from being considered independent; the son's employment does not preclude her from being considered independent and the company's board can determine that she is independent three years after the end of her employment even if her son is still a non-executive employee of the company at that time. Nonetheless, if the listed company sought to appoint this same director to one of its committees pursuant to the Exception prior to the expiration of the three-year lookback period, it would be unable to do so solely because of the son's employment.

Nasdaq believes this distinction in its rules is incongruous. If employment of a director's family member, other than as an executive officer, does not disqualify a

Committee's recommendation to adopt the Exception was not primarily targeted towards smaller companies, and the Blue Ribbon Committee recognized the utility of the Exception for companies of all sizes, the Exception is more important today for smaller companies given that they are now subject to all the same board composition requirements as larger companies.

¹⁴ See Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

¹⁵ See Nasdaq Listing Rule 5605(a)(2)(A), which provides that a director who is, or at any time during the past three years was, employed by a listed company may not be considered independent.

director from being considered independent, Nasdaq sees no policy basis for precluding a listed company from relying on the Exception for that same director where the company's board has determined that the director's membership on the relevant committee is required by the best interests of the company and its stockholders.

Accordingly, Nasdaq proposes to amend Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3) to allow a director who is a family member of a non-executive employee of a listed company to serve on the listed company's audit committee, compensation committee or nominations committee under exceptional and limited circumstances. This proposed change is consistent with the recommendation contained in the Blue Ribbon Report, which, as described above, would allow any non-independent director to serve under exceptional and limited circumstances with a proper board finding and disclosure.

Under both the current and proposed versions of the Exception, a listed company's board of directors must make an affirmative determination that the non-independent director's membership on a committee is required by the best interests of the company and its stockholders. In making this determination, Nasdaq expects that a board of directors would consider any family relationship between the non-independent director and a non-executive employee of the company. However, Nasdaq does not believe that the mere existence of this family relationship alone should create an outright prohibition on the use of the Exception.

Under both the current and proposed versions of the Exception, a listed company could not rely on the Exception for a director who has a family member who is an executive officer of the listed company. In addition, under both the current and proposed versions of the Exception for audit committees, a listed company could not rely on the

Exception for a director who does not meet the criteria set forth in Section 10A(m)(3) of the Exchange Act and the rules thereunder to allow the director to serve on the audit committee.¹⁶

Finally, under both the current and proposed versions of the Exception, a listed company, other than a foreign private issuer, that relies on the Exception for an audit committee member must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K.¹⁷ A foreign private issuer that relies on the Exception for an audit committee member must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the committee member not independent and the reasons for the board's determination to rely on the Exception.¹⁸ A listed company that relies on the Exception for a compensation or nominations committee member must disclose either on or through the company's website or in the proxy statement for the next annual meeting (or, if the company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship that makes the committee member not independent and the reasons for the determination to rely on the Exception.¹⁹ A listed company that relies on the Exception for a compensation or nominations committee member also must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on the Exception.²⁰

¹⁶ See 15 U.S.C. 78j-1(m)(3) and 17 C.F.R. 240.10A-3(b)(1).

¹⁷ See Nasdaq Listing Rule 5605(c)(2)(B).

¹⁸ Id.

¹⁹ See Nasdaq Listing Rules 5605(d)(3) and 5605(e)(3).

²⁰ Id.

The proposed rule change also would substitute “Executive Officer,” which is a defined term, for “officer,” which is now used in the Exception but is not defined.

Nasdaq always has interpreted these terms in the same way.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²¹ in general, and with Section 6(b)(5) of the Act,²² in particular.

Section 6(b)(5) requires, among other things, that a national securities exchange’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change would modify Nasdaq’s rules to allow a listed company to utilize the Exception for a very narrow category of additional directors: those who have a family member who is a non-executive employee of the listed company. Nasdaq believes that the proposed change will reduce confusion about the application of the Exception, given that the same family relationship does not otherwise preclude the director from being considered independent, and will thereby promote just and equitable principles of trade and remove an impediment to the mechanism of a free and open market. The proposed rule change is designed to protect investors and the public interest because a company’s board will continue to be required to conclude that the use of the Exception is in the best interests of the company and its stockholders and the use of the Exception will continue to be required to be disclosed as set forth in Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(5) and (8).

4. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Nasdaq does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2012-062)

May __, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify the Corporate Governance Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 17, 2012, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the exception that allows a non-independent director to serve on a listed company’s audit committee, compensation committee or nominations committee under exceptional and limited circumstances. The text of the proposed rule change is available on Nasdaq’s Website at <http://www.nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room. Nasdaq will implement the proposed rule change upon approval.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's rules generally require that a listed company's audit, compensation and nominations committees consist of "independent directors," as defined in Listing Rule 5605(a)(2).³ Under this definition, a company's board must determine affirmatively that a director does not have any relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In addition, there are certain categories of directors who cannot be considered independent, such as a director who is currently, or was during the prior three years, employed by the company, or a director who is a family member⁴ of an individual who is, or at any time during the past three years was, employed as an executive officer⁵ by the company.⁶ A director is not barred from being independent if he or she has a family member employed by the company, provided that the family member is not an executive officer of the company.

³ See Nasdaq Listing Rules 5605(c)(2), 5605(d)(2)(B) and 5605(e)(1)(B).

⁴ "Family Member" is defined as "a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home." Nasdaq Listing Rule 5605(a)(2).

⁵ "Executive Officer" is defined as an officer "covered in Rule 16a-1(f) under the [Exchange] Act." Nasdaq Listing Rule 5605(a)(1).

⁶ See Nasdaq Listing Rules 5605(a)(2)(A) and 5605(a)(2)(C).

Nasdaq's rules also include an exception (the "Exception") to permit a listed company, under exceptional and limited circumstances and with proper disclosure, to allow one non-independent director to serve on the audit, compensation or nominations committee for up to two years.⁷ The Exception, which is used infrequently by Nasdaq-listed companies,⁸ was first adopted for audit committees in December 1999,⁹ when the audit committee requirements were significantly enhanced following the release of the report of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Report").¹⁰ When Nasdaq implemented rules regarding independent director oversight of executive officer compensation and director nominations in 2003, these new rules included the Exception for compensation and nominations committees.¹¹

The Blue Ribbon Report identified examples of relationships that may interfere with an audit committee member's exercise of independence but also specifically recommended adopting an exception for a director "who has one or more of these relationships" if the company's board of directors, under exceptional and limited circumstances, determines that membership on the committee by the individual is

⁷ See Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

⁸ On December 31, 2011, nine companies were using the Exception: six companies for the audit committee only, two companies for the nominations committee only and one company for both the nominations and compensation committees. In the two-year period from January 1, 2010 to December 31, 2011, 37 companies used the Exception for one or more of their committees.

⁹ See Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999).

¹⁰ See Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999).

¹¹ See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003).

required by the best interests of the company and its stockholders and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.¹² The Exception allows a listed company greater flexibility as to board and committee membership and composition. This is particularly important for a smaller company that may have relationships with large investors that may require such flexibility.¹³

Currently, a listed company cannot utilize the Exception for a director who has a family member who is an employee of the listed company, even if that family member is not an executive officer of the company, if the director is not independent for an unrelated reason. However, that same family relationship would not otherwise preclude the director from being considered independent.¹⁴ To provide an example, consider a director who, until one year ago, was employed by a listed company and who has a son who is a non-executive employee of the listed company. That director cannot be considered independent until three years after the end of her employment.¹⁵ However, it is solely the prior employment relationship that precludes her from being considered independent; the son's employment does not preclude her from being considered

¹² See the Blue Ribbon Report at 24.

¹³ Id. at 23. The Blue Ribbon Report proposed to exempt smaller companies (i.e., those with a market capitalization below \$200 million) from the proposed audit committee requirements. Id. at 12 and 23. Thus, while the Blue Ribbon Committee's recommendation to adopt the Exception was not primarily targeted towards smaller companies, and the Blue Ribbon Committee recognized the utility of the Exception for companies of all sizes, the Exception is more important today for smaller companies given that they are now subject to all the same board composition requirements as larger companies.

¹⁴ See Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

¹⁵ See Nasdaq Listing Rule 5605(a)(2)(A), which provides that a director who is, or at any time during the past three years was, employed by a listed company may not be considered independent.

independent and the company's board can determine that she is independent three years after the end of her employment even if her son is still a non-executive employee of the company at that time. Nonetheless, if the listed company sought to appoint this same director to one of its committees pursuant to the Exception prior to the expiration of the three-year lookback period, it would be unable to do so solely because of the son's employment.

Nasdaq believes this distinction in its rules is incongruous. If employment of a director's family member, other than as an executive officer, does not disqualify a director from being considered independent, Nasdaq sees no policy basis for precluding a listed company from relying on the Exception for that same director where the company's board has determined that the director's membership on the relevant committee is required by the best interests of the company and its stockholders. Accordingly, Nasdaq proposes to amend Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3) to allow a director who is a family member of a non-executive employee of a listed company to serve on the listed company's audit committee, compensation committee or nominations committee under exceptional and limited circumstances. This proposed change is consistent with the recommendation contained in the Blue Ribbon Report, which, as described above, would allow any non-independent director to serve under exceptional and limited circumstances with a proper board finding and disclosure.

Under both the current and proposed versions of the Exception, a listed company's board of directors must make an affirmative determination that the non-independent director's membership on a committee is required by the best interests of the company and its stockholders. In making this determination, Nasdaq expects that a board

of directors would consider any family relationship between the non-independent director and a non-executive employee of the company. However, Nasdaq does not believe that the mere existence of this family relationship alone should create an outright prohibition on the use of the Exception.

Under both the current and proposed versions of the Exception, a listed company could not rely on the Exception for a director who has a family member who is an executive officer of the listed company. In addition, under both the current and proposed versions of the Exception for audit committees, a listed company could not rely on the Exception for a director who does not meet the criteria set forth in Section 10A(m)(3) of the Exchange Act and the rules thereunder to allow the director to serve on the audit committee.¹⁶

Finally, under both the current and proposed versions of the Exception, a listed company, other than a foreign private issuer, that relies on the Exception for an audit committee member must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K.¹⁷ A foreign private issuer that relies on the Exception for an audit committee member must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the committee member not independent and the reasons for the board's determination to rely on the Exception.¹⁸ A listed company that relies on the Exception for a compensation or nominations committee member must disclose either on or through the company's website or in the proxy statement for the next annual meeting (or, if the company does not file a proxy, in its

¹⁶ See 15 U.S.C. 78j-1(m)(3) and 17 C.F.R. 240.10A-3(b)(1).

¹⁷ See Nasdaq Listing Rule 5605(c)(2)(B).

¹⁸ Id.

Form 10-K or 20-F), the nature of the relationship that makes the committee member not independent and the reasons for the determination to rely on the Exception.¹⁹ A listed company that relies on the Exception for a compensation or nominations committee member also must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on the Exception.²⁰

The proposed rule change also would substitute “Executive Officer,” which is a defined term, for “officer,” which is now used in the Exception but is not defined.

Nasdaq always has interpreted these terms in the same way.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²¹ in general, and with Section 6(b)(5) of the Act,²² in particular. Section 6(b)(5) requires, among other things, that a national securities exchange’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change would modify Nasdaq’s rules to allow a listed company to utilize the Exception for a very narrow category of additional directors: those who have a family member who is a non-executive employee of the listed company. Nasdaq believes that the proposed change will reduce confusion about the application of the Exception, given that the same family relationship

¹⁹ See Nasdaq Listing Rules 5605(d)(3) and 5605(e)(3).

²⁰ Id.

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(5) and (8).

does not otherwise preclude the director from being considered independent, and will thereby promote just and equitable principles of trade and remove an impediment to the mechanism of a free and open market. The proposed rule change is designed to protect investors and the public interest because a company's board will continue to be required to conclude that the use of the Exception is in the best interests of the company and its stockholders and the use of the Exception will continue to be required to be disclosed as set forth in Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-062 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-062. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be

available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2012-062 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5Text of the Proposed Rule Change¹

New language is underlined; deletions are in [brackets].

5605. Board of Directors and Committees

(a) – (b) **No change.**

(c) **Audit Committee Requirements**

(1) **No change.**

IM-5605-3. No change.

(2) **Audit Committee Composition**

(A) **No change.**

(B) **Non-Independent Director for Exceptional and Limited Circumstances**

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not independent as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not [a current officer] currently an Executive Officer or employee or a Family Member of an Executive Officer[such officer or employee], may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders. A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's

¹ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.cchwallstreet.com>.

determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

IM-5605-4. No change.

(3) – (5) No change.

(d) Independent Director Oversight of Executive Officer Compensation

(1) – (2) No change.

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraphs 5605(d)(1)(B) and 5605(d)(2)(B) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 5605(a)(2) and is not [a current officer]~~currently an Executive Officer~~ or employee or a Family Member of an Executive Officer[officer or employee], may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

IM-5605-6. No change.

(e) Independent Director Oversight of Director Nominations

(1) – (2) No change.

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraph 5605(e)(1)(B) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 5605(a)(2) and is not [a current officer]currently an Executive Officer or employee or a Family Member of an Executive Officer[officer or employee], may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

(4) – (5) No change.

IM-5605-7. No change.

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